IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 231 of 2001
(Old No. 835/1985)

Virendra Singh
Son of Sri Randeep Singh
Resident of Village Almas
P.S. Narendra Nagar, District
Tehri Garhwal ....Appellant

Vs.

1- The State of U.P.
2- Sri Sakla Nand Jugran Assistant Tehsildar, Dehradun
3- Sri Sripate Badone, Supervisor Kanungo, Tehsil Tehri, District Tehri Garhwal
4- Puran Singh Duryal, Revenue Record Keeper, Collectorate Tehri, District Tehri Garhwal
5- Bachan Singh Rana, Patwari Brahmsari, Tehsil Dhanolti, Tehri, District Tehri Garhwal
6- Radha Krishna Suryal, Patwari Chaka Kuili, Tehsil Deo Prayag, Tehri, District Tehri Garhwal
7- Bharat Singh, Patwari Kiari, Tehsil Dhanolti, Tehri, District Tehri Garhwal
8- Nathi lal, Patwari Kamand, Tehsil Tehri, District Tehri Garhwal
9- Khila Nand, Peon, office of the Naib Tehsildar, Dhanolti, District Tehri Garhwal
10- Virendra Singh, Patwari Thayur, Tehsil Dhanolti, District Tehri Garhwal
11- Mangal Singh, Peon in Tehsil Dhanolti, District Tehri Garhwal

.....Respondents

Sri H.S. Rawat, holding brief of Sri V.B.S. Negi Advocate for the appellant.
Sri Sandeep Kothari, Advocate for respondents no. 3 to 11.

Dated: November 17, 2007

Hon'ble B.C. Kandpal, J.

This criminal appeal arises out against the judgment and order dated 6th of August, 1983, passed by Sessions Judge, Tehri Garhwal, in

Sessions Trial No. 16 of 1982, State vs. Sal lanand Jugran & others, acquitting the accused-respondents of the offence under Sections 147, 427 read with Section 149, 452 read with Section 149, 342 I.P.C., and in the alternative under Section 395 I.P.C.

Briefly stated the prosecution case is that a complaint was lodged by appellant in the court of Munsif Magistrate, Tehri, on 3.10.1981, against the accused/respondents no. 2 to 11 under Sections 395, 398, 342, 454, 455, 504, 506 and 147 I.P.C. The appellant has come with the allegations in the complaint that on 26.9.1981 at 6.00 AM the Halqua Patwari Sri Bachan Singh Rana and his peon Sri Khilanand came to the house of the complainant and told his father Randeep Singh that Naib Tehsildar was calling him at Almas Bend and thereafter Randeep Singh accompanied the officials went to the Almas Bend and when he enquired from the officials as to why he was brought there, the accused started hurling abuses and threatened to give slap as he was defaulter of the dues and sent him Tehri jail. The further allegation is that in the morning of 27.9.1981 Naib Tehsildar accompanied by all the accused came to the house of the complainant and started looting his property and beating the members of his family. It is also allegation of the prosecution that the accused looted ornaments and cash.

The learned Magistrate committed the case to the Court of Sessions for trial.

The learned Sessions Judge framed charges against the accused/respondents, who pleaded not guilty and claimed their trial.

The prosecution in order to prove its case examined PW 1 Virendra Singh, the complainant himself, PW-2 Randip Singh, father of the complainant. PW-3 Sripati, PW-4 Bishambhar Dutt, PW-5 Smt. Gita, PW-6 Bhavan Singh and PW-7, Gaje Singh, all alleged eye witnesses of the occurrence, and PW-8 Dr. S. N. Nautiyal, who had examined the injuries of Smt. Pratima, the wife of Sripati, PW-3, on 28.9.1981 and had prepared an injury report in respect of it, respectively.

The prosecution has also filed and proved Ext. Ka-1, the complaint itself dated 3.10.81, filed by the complainant in the court of C.J.M. Tehri Ext. Ka-2, the injury report of Smt. Pratima Devi prepared by PW-8, Dr. S. N. Nautiyal at the time of her medical examination on 28.9.1981 at 11.55 a.m. and Ext. Ka-3, the certified copy of the application dated 30.9.1981, sent by the complainant to the District Magistrate, Tehri Garhwal.

Thereafter, the learned Sessions Judge after considering the evidence on record, acquitting the accused/respondents of the charges levelled against them.

The complainant feeling aggrieved by the said judgment, has filed this appeal before this Court.

I have heard learned counsel for the parties and gone through the record.

The allegations against the accused is that they came to the house of the complainant and told his father Randeep Singh that Naib Tehsildar was calling him at Almas Bend and thereafter Randeep Singh accompanied the officials went to the Almas Bend and when he enquired from the officials as to why he was brought there, the accused started hurling abuses and threatened to give slap as he was defaulter of the dues and sent him Tehri jail. The further allegation is that in the morning of 27.9.1981 Naib Tehsildar accompanied by all the accused came to the house of the complainant and started looting his property and beating the members of his family. It is also allegation of the prosecution that the accused looted ornaments and case.

The prosecution in support of its case examined PWs 1 to 7. The F.I.R. in this case has been lodged with the delay of 6 days. Although the complainant Virendra Singh PW-1 has stated that he had filed an application before the District Magistrate at the earliest, but what orders have been passed therein, have not been brought to the knowledge of the court.

Further, conflicting versions have been given about the occurrence by the complainant in the complaint Ext. Ka-1 and the application given to the District Magistrate, Ext. Ka-3. In Ext. Ka-3 not a single word has been mentioned about the dacoity committed at the house of the complainant and also about the fact that the accused broke open the wooden box and looted the ornaments. The

application Ext. Ka-3 is the document which has been filed at the earliest opportunity of the alleged occurrence and believable and the version given in it shall be treated reliable and the allegations made in the subsequent complaint Ext. Ka-1, which are totally conflicting, cannot be believed. Therefore, genesis of the prosecution case as the same are exaggerated one, being doubtful, cannot be taken to be true.

The prosecution witnesses are not consistent in their deposition about the occurrence and the learned Sessions Judge has recorded categorical finding and has given reasoning for acquittal of the accused/respondents. There are material contradictions in the statements of the witness relating to the occurrence.

I have also gone through the finding recorded by the learned Sessions Judge and I find no illegality or impropriety in it. Therefore, in absence of the any cogent and reliable evidence adduced by the prosecution, the accused have rightly been acquitted of the charges levelled against them.

In view of the above, the appeal lacks merit and is liable to be dismissed.

Accordingly, the appeal is dismissed. The impugned judgment and order dated 6th of August, 1983, passed by Sessions Judge, Tehri Garhwal, in Sessions Trial No. 16 of 1982, State vs. Saklanand Jugran & others, acquitting the accused-respondents of the offence under Sections 147, 427 read with Section 149, 452 read with Section 149,

342 I.P.C., and in the alternative under Section 395 I.P.C., is upheld.

(B.C. Kandpal, J.)

SP